

# **DEFICIENCY PROGRESS REPORT – UPDATE 3**

February 17, 2009

**CUPA: SANTA CRUZ COUNTY ENVIRONMENTAL HEALTH SERVICES**

**Evaluation Date: April 16 and 17, 2008**

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**Update 3 Submittal Date:** January 9, 2009

**Status:** Deficiency 5 remains outstanding.

**Next Progress Report Due (4<sup>th</sup> Update): April 13, 2009**

1. **Deficiency:** The CUPA is not accurately reporting all items requested on their Annual Inspection Summary Report 3.

**Corrective Action:** The CUPA corrected this deficiency at the time of the evaluation.  
Note: before submittal of any report, the CUPA needs to verify that the data reported are as accurate as possible.

2. **Deficiency:** The CUPA is not fully tracking and reporting violations information and enforcement actions taken on their Annual Enforcement Summary Report 4.

**Corrective Action:** The CUPA corrected this deficiency at the time of the evaluation.  
Note: before submittal of any report, the CUPA needs to verify that the data reported are as accurate as possible.

3. **Deficiency:** The CUPA's Inspection and Enforcement (I&E) Program Plan does not contain all the required elements.

**Corrective Action:** The CUPA corrected this deficiency at the time of the evaluation.

4. **Deficiency:** The CUPA's FY 05/06 and FY 06/07 Self-Audit Reports did not contain all of the required elements.

**Corrective Action:** By October 14, 2008, the CUPA will submit their FY 07/08 Self-Audit Report that contains all the required elements.

**CUPA Update 1:** The CUPA will submit their FY 07/08 Self-Audit Report with all required elements.

**Comments to Update 1:** *This deficiency remains outstanding. On the next progress report, due on October 14, 2008, please submit the CUPA's FY 07/08 Self Audit Report showing all the required elements.*

**CUPA Update 2:** A copy of the complete CUPA Self-Audit narrative for FY 07/08 is attached. We consider this deficiency corrected.

**Comments to Update 2:** *The CUPA has satisfactorily corrected this deficiency; no further update is required.*

**5. Deficiency:** The CUPA has not updated its Area Plan within the last three years.

**Corrective Action:** Beginning July 16, 2008, the CUPA will submit the status of this deficiency. In addition, once the CUPA finalizes its Area Plan, submit a copy to OES.

**CUPA Update 1:** The CUPA is currently circulating the Memorandum of Understanding for signatures to each of the City Managers, Vice-Chancellor of the University, and the California State Parks Superintendent for Santa Cruz County. This agreement is the cornerstone of the Area Plan and once it is signed, the new Area Plan will take effect. The CUPA will submit a copy to OES as soon as the agreement is in-place.

**Comments to Update 1:** *This deficiency remains in the process of being corrected. On the next report, due on October 14, 2008, please indicate the CUPA's progress regarding the Area Plan approval. Once the Area Plan has been reviewed and accepted, please send a copy to OES for review.*

**CUPA Update 2:** This deficiency remains outstanding although progress has been made towards correcting it. We have currently secured all but one signature for the agency MOU and we plan to either secure an agreement with the California State Parks Superintendent in the near future or move ahead without their participation. We have also begun work on adding the pesticide drift protocols in the Area Plan in order to be in compliance with the recent regulations regarding pesticide drift. We plan to finalize our work on the Area Plan prior to the next scheduled quarterly update report and will submit a copy to OES at that time.

**Comments to Update 2:** *This deficiency remains in the process of being corrected. In the next progress report, due January 12, 2009, please indicate the CUPA's progress regarding the Area Plan approval.*

**CUPA Update 3:** We now consider the Area Plan 2009 update complete. All agency MOU agreements have been signed by the participating agencies and copies of the completed Area Plan have been submitted to all local interested parties. A copy of the

full Area Plan is also being assembled and will soon be sent to OES for their review. The next update for the Area Plan is scheduled for January 2012.

**Comments to Update 3:** *OES considers this deficiency to be corrected upon receipt of the CUPA's Area Plan to ensure that all components have been met.*

- 6. Deficiency:** The CUPA has not performed an annual California Accidental Release Prevention (CalARP) performance audit.

**Corrective Action:** By January 12, 2009, the CUPA will have performed an annual CalARP performance audit. Annually thereafter, the CUPA may incorporate the CalARP performance audit with the Unified Program annual Self-Audit Report.

**CUPA Update 1:** The CUPA will have completed the annual performance audits on the 36 facilities within our jurisdiction by the January 12, 2009 deadline.

**Comments to Update 1:** *This deficiency remains outstanding. On the next progress report, due on October 14, 2008, please submit a status.*

**CUPA Update 2:** The annual CalARP program performance audit has been completed and is part of the full self-audit narrative report submitted in response to deficiency #4. We consider this deficiency to be corrected.

**Comments to Update 2:** *OES considers this deficiency to be corrected; no further update is required.*

- 7. Deficiency:** The CUPA does not have a CalARP dispute resolution procedure.

**Corrective Action:** By July 16, 2008, the CUPA will establish a CalARP dispute resolution procedure.

**CUPA Update 1:** The CUPA has a dispute resolution process for all programs under the Unified Program (including CalARP facilities) that is consistent with Title 19, Section 2780.1. This process is outlined in Chapter 7.100.090, of the Santa Cruz County Code pertaining to Hazardous Materials, Hazardous Waste, and Underground Storage Tanks. (Copy attached)

**Comments to Update 1:** *The CUPA's dispute resolution does not encompass all aspects of the California Code of Regulations title 19, section 2780.1. The CUPA's county ordinance does not make note of California Code of Regulations title 19, section 2780.1 (b), stating that the owner/operator of a stationary source may appeal the decision of the administering agency (CUPA) to the Director of OES by serving the Director with written notice of appeal. On the next progress report, due on October 14, 2008, please include the CUPA's progress toward correcting this deficiency.*

**CUPA Update 2:** A CalARP program specific dispute resolution process meeting the requirements of CCR Title 19 Section 2780.1 has been implemented in Santa Cruz County. A copy of the dispute resolution process is attached. We consider this deficiency to be corrected.

**Comments to Update 2:** *OES considers this deficiency to be corrected; no further update is required.*

8. **Deficiency:** The CUPA is not ensuring that all businesses subject to the hazardous materials reporting requirements to annually submit their hazardous materials inventory or annual certification statement of “no change” in hazardous materials inventory.

**Corrective Action:** By July 16, 2008, the CUPA will submit an action plan outlining how the CUPA will maintain annual inventory certifications for its business plan files.

**CUPA Update 1:** Certifications forms are sent out with the invoices for permit renewal. Upon return, if the Certification is complete and signed it is added to the facility file. If the Certification is incomplete or unsigned, it is given to the District Inspector for follow up. The District Inspector is responsible for ensuring the Certification is complete. We have also begun entering the dates the (completed) Certifications are received and created a query that will allow us to provide the District Inspector a report that identifies Certifications older than one year.

**Comments to Update 1:** *The CUPA has made progress toward correcting this deficiency. On the next report, due on October 14, 2008, please include the CUPA's progress toward correcting this deficiency, including the number of facility files updated and the estimated timeline for the correction of this deficiency.*

**CUPA Update 2:** We continue to make progress on this deficiency. Certification forms continue to be sent out with our monthly CUPA billing statements and are tracked as described in the previous update. A copy of the certification form is attached. We also continue to track the dates of last certification in our Envision database and currently have 110 of our HMMP facilities verified to have certified within the last year in this manner. Since our CUPA facilities are billed throughout the year, we estimate that it will take the remainder of FY 08/09 to fully correct this deficiency by entering and verifying all HMMP updates.

**Comments to Update 2:** *The CUPA continues to make progress towards correcting this deficiency. In the next progress report, due on January 12, 2009, please include any further progress, including the number of facility files updated and whether the CUPA feels they will correct this deficiency within their predicted time table.*

**CUPA Update 3:** We continue to make progress towards correcting this deficiency. A recent check of our data shows 733 of our total inventory of 779 HMMP facilities have current certification dates listed in Envision. Our inspectors provide a copy of the certification form during inspections and are tracking those who have not certified within

the past year as minor violations. We also continue to send out certification forms with annual billing statements. We feel certain that we will have current dates for all facilities available for tracking in Envision before the end of our current fiscal year.

**Comments to Update 3:** *The numbers provided by the CUPA have shown that their efforts have been very successful in correcting this deficiency and OES is confident that the continued implementation of this corrective action will gain full compliance. OES considers this deficiency to be corrected; no further update is required. Keep up the good work.*

- 9. Deficiency:** The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to certify and review their business plan every three years.

**Corrective Action:** By July 16, 2008, the CUPA must submit an action plan outlining how the CUPA will maintain Business Plan review certifications among the business plans.

**CUPA Update 1:** Please see the response to Deficiency #8.

**Comments to Update 1:** *The CUPA has made progress toward correcting this deficiency. On the next progress report, due on October 14, 2008, please include the CUPA's progress toward correcting this deficiency, including the number of facility files updated and the estimated timeline for the correction of this deficiency.*

**CUPA Update 2:** This deficiency is closely tied to Deficiency #8 and is being corrected in the same manner and under the same timeline for expected completion.

**Comments to Update 2:** *The CUPA continues to make progress towards correcting this deficiency. In the next progress report, due on January 12, 2009, please include any further progress, including the number of facility files updated and whether the CUPA feels they will correct this deficiency within their predicted time table.*

**CUPA Update 3:** Please see the response to deficiency #8.

**Comments to Update 3:** *The numbers provided by the CUPA have shown that their efforts have been very successful in correcting this deficiency and OES is confident that the continued implementation of this corrective action will gain full compliance. OES considers this deficiency to be corrected; no further update is required. Keep up the good work.*

- 10. Deficiency:** The CUPA did not conduct a complete hazardous waste generator inspection on March 19, 2008.

**Corrective Action:** The CUPA inspector corrected this deficiency before the end of the inspection.

**11. Deficiency:** The CUPA is unable to document in certain instances that some facilities with a notice to comply for minor violations have not returned to compliance within 30 days of notification.

**Corrective Action:** The CUPA will follow its I&E Program Plan. By January 12, 2009, submit an example of an RTC or a complete follow-up report.

**CUPA Update 1:** The CUPA is exploring several options for satisfying this requirement. We will have a process for documenting a return to compliance within 30 days for minor violations by the January 12, 2009 date.

**Comments to Update 1:** *This deficiency remains outstanding. On the next progress report, due on October 14, 2008, please submit a status.*

**CUPA Update 2:** This deficiency is still in the process of being corrected. All violations are currently being tracked in Envision via individual violation records that are entered by clerical staff when the daily record for a particular inspection is entered. There are "comply by" and "complied on" date fields on the violation record form for tracking violation compliance. We plan to track violations by adding a default 30-day comply by date on the violation record in Envision and adding the complied on dates manually to close the loop after the inspector has verified compliance. The Hazardous Materials Program Manager will then run a report each month that lists open violations (those with blank "complied on" date fields) that exceed the 30-day window so that appropriate follow up actions can be considered. We currently plan to have this procedure in place and operating prior to the original January 12, 2009 deadline.

**Comments to Update 2:** *DTSC appreciates the CUPA's progress. Please continue to update DTSC on the CUPA's progress toward correcting this deficiency.*

**CUPA Update 3:** We have completed procedures as outlined above for ongoing tracking of minor violations in Envision. A copy of a typical violation query report is attached to this update. Compliance is typically verified either by receipt of a completed RTC form (copy attached) or through a follow-up inspection and report. Once compliance is verified the "complied on" date is entered on the violation record in Envision and the loop is closed. Our I&E Program Plan has been updated to include the new tracking procedures.

**Comments to Update 3:** *The CUPA has satisfactorily corrected this deficiency and no further update is required.*

**12. Deficiency:** The CUPA failed to take enforcement in a manner consistent with the law.

**Corrective Action:** The CUPA will initiate and complete the appropriate formal enforcement in the future for all Class I violations.

The CUPA will refresh staff knowledge of the definitions of Class I, Class II and minor violations. A good tool for refresher training may include covering the Cal/EPA "Violation Classification Guidance Document for Unified Program Agencies," which is available on the Cal/EPA website under Unified Program-Publications and Forms.

By July 16, 2008, the CUPA will provide violation determination training to its inspectors.

**CUPA Update 1:** The "Violation Classification Guidance Document for Unified Program Agencies" was circulated for staff to read and refresh their understanding of Class I, Class II, and minor violations as recommended in the corrective action portion of the evaluation.

**Comments to Update 1:** *This deficiency is on its way to being corrected. On the next update, due on October 14, 2008, please provide current inspection reports indicating facilities that were cited for each of the classes of violations, if any, and documentation of actions (or follow-up) taken by the CUPA.*

**CUPA Update 2:** As stated in our previous update the violation classification guidance document has been reviewed by our inspection staff as refresher training. In addition we are currently in the planning stages of implementing an improved tracking and follow-up procedure for classifying and appropriate response to all violations, including Class I violations, by more fully utilizing the violation and enforcement tracking modules in Envision as described in the deficiency #11 update above. We will update the evaluation team on this project in future progress reports. A copy of a recent inspection report is attached for your review. The inspector cited both Class I and minor violations during this inspection. We have consulted with our District Attorney regarding this case and are currently processing a case transmittal report for consideration of prosecution in this matter. The inspection report enclosed per your request is confidential due to the ongoing investigation and pending enforcement action and should be treated as such by your agency.

**Comments to Update 2:** *The CUPA has satisfactorily corrected this deficiency; no further update is required.*

**13. Deficiency:** The underground storage tank (UST) operating permit does not contain all of the required elements.

**Corrective Action:** By April 30, 2009, the CUPA will amend the permit to reflect all the required elements. The CUPA may either add the missing elements to the permit or as a condition of the permit; then attach the completed and approved monitoring plan to the permit.

**CUPA Update 1:** The CUPA will add the missing elements to the permit or as a condition of the permit; then attach the completed and approved monitoring plan to the permit.

**Comments to Update 1:** *On the next progress report, due on October 14, 2008, update SWRCB on the CUPA's progress toward correcting this deficiency, and, if available, submit a revised sample permit.*

**CUPA Update 2:** We have added language to the permit conditions section of the permit that references the requirement to establish written monitoring and response plans with the supporting CCR section numbers. The approved tank monitoring and response plan forms are also included in the facility file along with the current application and other required forms as part of the full UST permit. Copies of a typical permit, conditions and approved monitoring and response plan forms are attached to this update. We consider this deficiency to be corrected.

**Comments to Update 2:** *The UST operating permit and its conditions reference all required elements, but the attached monitoring and response plans do not show CUPA approval of the submitted documents. The plans are missing the CUPA's approval signature, and the check box for "approved", "disapproved", or "approved with conditions" is blank. On the next progress report, please submit a set of approved monitoring and response plans with CUPA signature shown.*

**CUPA Update 3:** A copy of a recently submitted and properly approved monitoring and response plans forms are enclosed per your request.

**Comments to Update 3:** *The SWRCB assumes that the submitted monitoring plan has been approved. This is assumed due to the last page missing from the monitoring plan provided to the state. The provided response plan has been approved. With this assumption, the SWRCB considers this deficiency corrected.*